



## Amendment and Readoption of 326 IAC 2-10, Permit by Rule

#03-332(APCB)

### Overview

Readopts 326 IAC 2-10-1 and adds 326 IAC 2-10-2.1, 326 IAC 2-10-3.1, 326 IAC 2-10-4.1, 326 IAC 2-10-5.1, and 326 IAC 2-10-6.1 to provide the implementation measures applicable to 326 IAC 2-10-1.

### Citations Affected

Adds: 326 IAC 2-10-2.1; 326 IAC 2-10-3.1; 326 IAC 2-10-4.1; 326 IAC 2-10-5.1; 326 IAC 2-10-6.1.  
Readopts: 326 IAC 2-10-1.

### Affected Persons

Sources that limit their actual emissions to below major source levels and that do not have a control device as an integral part of their process. These sources were covered by the permit by rule under 326 IAC 2-10 prior to January 1, 2003.

The general public in the vicinity of the sources subject to 326 IAC 2-10, permit by rule, will benefit from the regulation of sources subject to this rule.

### Reasons for the Rule

The permit by rule was developed to minimize the regulatory burden and cost for both the regulated community and the department in the implementation of the permit requirements of Title V of the Clean Air Act Amendments of 1990 that resulted in development of the Part 70 Permit Program.

### Economic Impact of the Rule

Readoption of 326 IAC 2-10-1 and adding new rules 326 IAC 2-10-2.1 through 326 IAC 2-10-6.1 to replace 326 IAC 2-10-2 through 6 which expired on January 1, 2003, will not increase costs to sources or the department. However, failure to readopt these rules could increase permit fees to the sources as explained further below.

### Benefits of the Rule

If 326 IAC 2-10-1 is not readopted and 326 IAC 2-10-2.1 through 326 IAC 2-10-6.1 are not added to implement 326 IAC 2-10-1, sources now covered by a permit under this rule will be subject to one of the federally approved permit programs or state permit programs and will be required to obtain the applicable permit and pay the associated fees. There is no permit fee associated with the permit by rule under 326 IAC 2-10. In the absence of 326 IAC 2-10 sources that were covered by 326 IAC 2-10 will need a permit under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each of these permit programs.

### Description of the Rulemaking Project

In 1996 the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5 (the "sunset statute"). All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect.

IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only.

IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13, a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule

separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

Permit by rule was first noticed for readoption in the first sunset rulemaking (LSA #00-44). Because a request and a basis for the request were submitted during the first comment period, permit by rule was not readopted in the first sunset rulemaking.

During the summer of 2003, 326 IAC 2-10 was noticed for rulemaking under the regular environmental rulemaking process. IDEM received no comments specific to 326 IAC 2-10 in response to the first or second notice of public comment period. Following preliminary adoption, it was determined that an error had been made in calculating the expiration date for rules subject to sunset. Sections 2 through 6 of 326 IAC 2-10, which had been adopted in 1996, expired on January 1, 2003. Section 1, which had been amended in 1998, expires on January 1, 2005.

Following the determination that sections 2 through 6 had expired, a notice of withdrawal for rulemaking LSA #03-201 was published in the January 1, 2004, *Indiana Register* and a new rulemaking was started. Additionally, as provided by IC 13-14-9.5-5, the governor found that failure to readopt 325 IAC 2-10-1 would cause an emergency to exist and issued an executive order postponing its expiration date for one year, until January 1, 2005.

On January 1, 2004, the department initiated a rulemaking under IC 13-14-9-7 to readopt 326 IAC 2-10-1 and add new rules 326 IAC 2-10-2.1 through 6.1 to replace expired sections 2 through 6 (LSA #03-332). This rulemaking solicits public comment concerning 326 IAC 2-10.

Additionally, the Air Pollution Control Board, at its January 7, 2004, meeting, under IC 4-22-2-37.1(b) adopted an emergency rule to add provisions to implement 326 IAC 2-10-1. The emergency rule was filed with the Secretary of State and became effective on January 8, 2004. It expires on April 7, 2004. An emergency rule may be extended for two extension periods.

326 IAC 2-10 applies to sources that limit their actual emissions below major source levels and do not have a control device as an integral part of their process. A source that meets the requirements of the rule is considered to be permitted under the rule.

The number of sources that are covered by this rule is not known since the rule provides that as long as a source can demonstrate compliance with the requirements of the rule, upon request, the source is covered by the permit by rule and is not required to notify or file any report with the department.

### **Scheduled Hearings**

First Public Hearing: March 3, 2004.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- 3) Zoning classifications.
- 4) The nature of the existing air quality or existing water quality, as appropriate.
- 5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- 6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:
  - (A) human, plant, animal, or aquatic life; or
  - (B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

326 IAC 2-10, permit by rule, is not required by federal law and is not approved as part of the state implementation plan. However, in the absence of 326 IAC 2-10, sources now permitted under this rule would be subject to one of the federally approved permit programs or state permit programs and would be required to obtain the applicable permit and pay the associated fees.

### **Rulemaking Process**

The first step in the rulemaking process is a first notice published in the *Indiana Register*. This includes a discussion of issues and opens a first comment period. The second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the

draft rule.

IC 13-14-9-7 recognizes under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that the rulemaking policy alternatives available to IDEM are so limited that the notice of first comment period would provide no substantial benefit, IDEM may forego this comment period and proceed directly to the notice of second public comment period.

If the commissioner makes the determination of limited rulemaking policy alternatives required by IC 13-14-9-7, the commissioner shall prepare written findings and include them in the second notice of public comment period published in the Indiana Register. This document constitutes the commissioner's written findings pursuant to IC 13-14-7. The Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the Indiana Register after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Secretary of State.

#### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Suzanne Whitmer, Rule Development Section, Office of Air Quality, (317) 232-8229 or (800) 451-6027 ext. 2-8229 (in Indiana).